THE HON'BLE SRI JUSTICE
GODA RAGHURAM
And
THE HON'BLE SRI JUSTICE
R. SUBHASH REDDY

W.P.No. 2208 of 2007

Dated: 07-11-2007

Between:

Y. Srinivas

…Petitioner

And
The Registrar (Administration),
High Court of A.P., Hyderabad and twenty others.
…Respondents

THE HON'BLE SRI JUSTICE
GODA RAGHURAM
And
THE HON'BLE SRI JUSTICE
R. SUBHASH REDDY

W.P.No. 2208 of 2007

Oral Order: (Per: The Hon'ble Sri justice Goda Raghuram)

The writ petition assails the selection to the post of Amin and Junior Assistants held on 10-12-2006 in the East Godavari district judicial unit.

Heard Sri M.R. Tagore, the learned counsel for the

petitioner; Sri D.V. Sitarama Murthy, the learned standing counsel for respondent Nos.1 and 2 and Sri Gullapalli Radhakrishnan, the learned counsel for respondent Nos. 3 to 21, (who were impleaded as respondents by the order of this Court dated 03-10-2007 in W.P.M.P.No. 16211 of 2007).

The petitioner who belongs to B.C-D community applied for the post of Amin (Field Assistant) pursuant to an employment notification dated 07-10-2003 issued by the second respondent. The notification was in respect of seven vacancies to the post of Amin of which five (5) were general vacancies but with a reservation of two vacancies for Women and one for Ex-servicemen; one vacancy was reserved for Scheduled Tribes and one for B.C-B category. Note-2 of the notification clearly specified that in the event of more than twenty (20) candidates applying for a vacancy, the appointing authority would be entitled to shortlist candidates on the basis of marks obtained in the qualifying examination and other relevant considerations. Note-5 specified that the applicants will be subjected to written and oral test for testing their suitability to the post. The notification also specified that as on 01-07-2003 a candidate must have completed the age of 18 years and must not have completed the age of 28 years and that age relaxation in the matter of maximum age limit is available for S.Cs., S.Ts., and B.Cs., to the extent of five (5) years.

Since the petitioner is a B.C-B category candidate, in terms of the notification, the upper age limit is 33 years (28 years + 5 years). Admittedly, the petitioner was aged 37 years and 3 months as on
01-07-2003. The learned counsel for the petitioner admits this position.

The written examination pursuant to the notification dated
07-10-2003 was held on 10-12-2006. However, the eligibility criteria were applied in terms of the notification viz., the age as on
01-07-2003.

The petitioner alleges to have learnt that the official respondents had restricted entitlement to appear in the written test held on 10-12-2006 on the basis of cut off marks in the Secondary School Certificate examination. It is contended that since the notification prescribed the basic qualification as a pass in S.S.C. or an equivalent examination and since the notification also specified that the candidates are liable to be subjected to written test and oral interview, no cut off marks *qua* the qualifying examination (S.S.C.) could have been legitimately prescribed for filtering the applicants including the petitioner to appear at the written examination. It is alleged that in other districts such as Ranga Reddy district all candidates who had applied were called for interview and afforded an opportunity.

Earlier, the petitioner filed W.P.No.26324 of 2006 aggrieved by the action of the official respondents in not calling him for the written test. This writ petition was dismissed on 22-12-2006 affording liberty to challenge the results of the written examination held on 10-12-2006. Earlier to filing W.P.No. 26324 of 2006, the petitioner filed W.P.No. 1667 of 2004 which was disposed of at the stage of admission recording the submission on behalf of the official respondents that "*…petitioner's application for the post of Amin will be dealt with and considered in accordance with law and the amended Rules."* W.P.No. 1667 of 2004 was filed *inter alia* for enhancement of the maximum age limit from 28 to 33 years.

Till the issuance of G.O.Ms.No.359 General Administration (Ser.A) Department dated 24-11-2003 (for short 'G.O.Ms. 359') by which an *adhoc* rule (made in exercise of powers available under the proviso to Article 309 of the Constitution of India) was issued enhancing the upper age limit for direct recruitment to any category or post in the State and Subordinate services from 28 to 33 years, the upper age limit for direct recruitment to a post in the State or Subordinate services was 28 years. The *adhoc* rule issued in G.O.Ms.No. 359 is neither expressly nor by any compelling implications retrospective in scope. In the circumstances, on empirical principles whether the enhancement of upper age limit of 33 years under G.O.Ms.No. 359 is applicable to employment notifications issued prior to G.O.Ms.No. 359, is an issue that may require to be considered.

The second respondent has filed a counter dated 23-03-2007. The counter relies on Note-2 in the

recruitment notification dated 07-10-2003 which enables the appointing authority to shortlist the candidates on the basis of marks obtained in the qualifying examination and other relevant considerations, in case more than 20 candidates apply for a vacancy. The counter also refers to the revised guidelines for temporary recruitment to the posts in the Andhra Pradesh Judicial Ministerial Service Rules, issued by the High Court on 21-07-2003. Paragraph No.7 of these guidelines stipulates that for the purpose of screening/shortlisting applicants for posts in the Ministerial Services, the marks secured in the qualifying examination should be taken into consideration and those who secure a first class or 60% and above in the qualifying examination may be preferred to others subject to the condition that those having qualifications in typewriting (Higher Grade) and/or Shorthand and those possessing Law degree are not denied consideration. The counter states that in view of the provisions of Note-2 of the recruitment notification and the recruitment guidelines issued by the High Court, shortlist was prepared of 25 candidates for each vacancy in the various categories, for conducting the written examination. Accordingly, for the post of Amin reserved for B.C.-B category, the cut off marks came to 72.17% i.e., 433 marks out of 600. The petitioner had secured only 48% i.e., 288 marks out of 600 in the qualifying examination and therefore his application could not be considered for

shortlisting, is the defense.

To support his challenge to the recruitment process, the petitioner relies on the judgment of the Supreme Court in *Mohd. Riazul Usman Gani v. District & Sessions Judge*[1]. The recruitment to the post of Peons in the District judiciary in the State of Maharashtra was challenged on the ground that the recruitment was contrary to the relevant rules applicable to Class-III and IV Services of that State. 66 posts of Peons were notified for direct recruitment and 14,965 applications were received. The Advisory Committee constituted under the rules spelt out four criteria for shortlisting the applicants. Criterion 'd' specified that applications of candidates possessing minimum educational qualifications of pass in IV-vernacular standard and/or educated up to passing of VII-standard only should be considered for the interview to the posts of Peons and those who have studied above the VII-vernacular standard may not take proper interest to work as Peons and therefore should not be called for interview. Applying the standard 'd' supra, the writ petitioners who were also the appellants before the Supreme Court were denied a call for interview. They challenged this criterion contending that under the Rules, the educational qualification prescribed is not lower than a pass in the examination of standard-IV in the regional language and that denial of consideration for public employment on the ground of higher educational qualification is arbitrary and irrational. The challenge was defended on the ground that the persons having higher educational qualification may not take proper interest to work as Peons and further contended that it was

legitimate for the appointing authority to evolve criteria for shortlisting in the recruitment process when a large number of candidates apply for limited vacancies.

In the context of the competing positions adopted, the Supreme Court concluded that prescription of criteria when there are a large number of candidates is permissible, but the criteria must be reasonable and not arbitrary and must have nexus to the post for which the recruitment is made. Reliance for this was placed on earlier judgments of the Apex Court in *Govt. of A.P. v. P. Dilip Kumar*[2]; *M.P. Public Service Commission v. Navnit Kumar Potdar*[3]; *Union of India v. T. Sundararaman*[4] and *S.B. Mathur v. Chief Justice of Delhi High Court*[5].

In *Union of India v. T. Sundararaman* (4 supra), the UPSC had invited applications for the posts of Assistant Professors of Medicine. The recruitment notification after specifying the essential and minimum qualifications did stipulated that where the number of applications received is large and it is not convenient or practical for the Service Commission to interview all the candidates, the Commission may restrict the number of candidates to a reasonable limit on the basis of qualifications and experience higher than the minimum prescribed in the advertisement or by holding a screening test. Relying on this provision, the Service Commission shortlisted the candidates on the basis of four years' experience or more and called 20 candidates for interview, out of the 37 applications received for the three posts advertised. The selection was challenged and was upheld by the Central Administrative Tribunal. On appeal, the Supreme Court reversed and upheld the procedure adopted by the

Commission as legitimate. This decision was also relied on in *Mohd. Riazul Usman Gani v. District & Sessions Judge* (1 supra) for reiterating the principle that it is open to the employer or the recruiting agency to evolve criteria for shortlisting candidates for consideration for recruitment when there are large number of candidates, so long as the criteria evolved are reasonable and not arbitrary having regard to the post for which the recruitment is made.

In the case on hand, the recruitment notification as well as the guidelines issued by the Andhra Pradesh High Court do spell out an enabling power in the appointing authority to shortlist candidates on the basis of marks obtained in the qualifying examination, where more than 20 candidates apply for a vacancy. The guidelines issued by the High Court enable the appointing authority, the second respondent herein, to shortlist the candidates on the basis of marks obtained in the qualifying examinations and those who have secured first class or 60% and above may be preferred to others subject to those possessing qualifications in Typewriting (Higher Grade)/or shorthand and those possessing law degree not being denied consideration. Applying the dual guidelines and enabling powers referred to above, the second respondent shortlisted the candidates at 25 per each post for permitting them to the written examination. On application of this criteria, the cut off marks for B.C-B category came to 72.17% and for O.C. category 70.83%. The petitioner

did not qualify.

In the light of the decision of the Supreme Court in *Mohd. Riazul Usman Gani* (1 supra) and the ratio enunciated therein, the action of the official respondents, in particular the second respondent in applying the criteria of higher per centage (60% and above) in the qualifying examination for shortlisting candidates for moderating the number of candidates who would be eligible to appear at the written examination, does not appear to this Court to be either arbitrary or perverse. Rational criteria reasonably related to the object of recruitment have been applied and consistent with the guidelines issued by the High Court. This aspect of the challenge by the petitioner to the recruitment process therefore fails.

As the petitioner was lawfully excluded from appearing at the written examination for recruitment to the post of Amin, the contention by the party respondents that overage additionally renders the petitioner ineligible to be considered for recruitment and the integral question whether in view of the enhancement of age limit by G.O.Ms.No. 359 the petitioner became eligible in terms of age, need not be considered in this writ petition. We reject the writ petition on the singular ground that the petitioner was rationally and lawfully excluded for appearing at the written examination.

The writ petition fails and is accordingly dismissed. There shall be no order as to costs.

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GODA RAGHURAM, J

R. SUBHASH REDDY, J

Dated: 07-11-2007
Pvks/*

Nb:- Furnish c.c. in one week.
B/o pvks

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1 (2000) 2 SCC 606

2 (1993) 2 SCC 310 = 1993 SCC (L & S) 464= (1993) 24 ATC 123

3 (1994) 6 SCC 293 = 1994 SCC (L & S) 1377= (1994) 28 ACT 286

4 (1997) 4 SCC 664 = 1997 SCC (L & S) 988

5 1989 Supp (1) SCC 34 = 1989 SCC (L & S) 183 = (1989) 9 ATC 286 = AIR 1988 SC 2073.